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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th June 2007

No. 8225-1i/1-(B)44/2003/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 26th May, 2007 in I.D. Case No. 49/2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Konark Television Limited, Bhubaneswar and its workman Smt. Kabita Sahoo was referred for adjudication is hereby published as in the scheduled below —

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 49 OF 2003

The 26th May 2007

Presents :

Shri S.K.Mohapatra, O.S.J.S. (Jr.Br.),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of
M/s. Konark Television Ltd.,
Bhubaneswar .

.. First-party—Management

And

Their workman
Smt. Kabita Sahoo

.. Second-party—Workman

Appearances :

Miss. Nilima Mohanty

.. For First-party—Management

Smt. Kabita Sahoo

.. Second-party—Workman herself

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of M/s. Konak Television Limited, Bhubaneswar and their workman Smt. kabita Sahoo under Notification No. 10909/LE., dated the 26th Augst 2000 vide Memo. No. 8972 (5)/LE., dated the 9th September 2003 for adjudication by this Court.

2. The terms of reference by the State Government is as follows: —

“Whether the termination of service of Smt. Kabita Sahoo, Casual Helper with effect from 8th May 1999 by way of refusal of employment by the Management of M/s. Konark Television Limited, Bhubaneswar is legal and/or justified ? If not, what relief Smt. Sahoo is entitled to ?”

3. Shorn of all necessary details, the case of the workman is as follows: —

The workman joined her employment under the Management of M/s. Konark Television Limited, Bhubaneswar (hereinafter referred to as the Management) as a badli worker with effect from 27th August 1991. During her service initially the workman worked at Bhubaneswar and thereafter she was transferred to Balasore. On 11th June 1994 the workman was transferred to Hyderabad Branch of the Management with immediate effect. At Hyderabad she worked upto 19th December 1994 and thereafter her service was placed at Secunderabad Branch to work as a Casual Helper on temporary basis. In this way the workman was in continuous service under the Management and was discharging her duties satisfactorily. On 8th May 1999 when the workman went to join her duty, she was refused employment and therefore, the service of the workman was terminated by the Management with effect from 8th May 1999 by way of refusal of employment. Although the workman had rendered continuous service in terms of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Industrial Disputes Act), the Management did not comply any of the mandatory provisions contained in Section-F of the Industrial Disputes Act. Being aggrieved by the action of the Management in terminating her service by way of refusal of employment, the workman approached the authorities of the Labour Department who tried for a conciliation proceeding but failed and thereafter, the present reference was made to this Court for adjudication.

4. The Management in its written statement has contended that the engagement of the workman under the Management was purely contractual and need based basis and therefore, no right whatsoever accrued to the workman. There was no relationship of employer and employee between the Management and the workman and therefore, the case of the workman does not come within the purview of the I.D. Act. Although the workman was a casual labourer she was covered under the E.S.I and Provident Fund Act as an act of good gesture on the part of the Management. The termination of the service of the workman was naturally outcome of the nature of her engagement which was purely of contractual nature and therefore, there was no need to comply any of the provisions of the I.D. Act. On these averments the Management has sought for dismissal of the present reference.

5. On the aforesaid pleadings of the parties, the following issues have been framed for determination.

ISSUES

- (i) Whether the termination of service of Smt. Kabita Sahoo, Casual Helper with effect from 8th May 1999 by way of refusal of employment by the Management of M/s. Konark Television Ltd., Bhubaneswar is legal and/or justified ?
- (ii) If not, what relief Smt. Sahoo is entitled to ?

6. The workman has examined herself as A.W. 1. In her evidence W.W.1 has categorically stated that she started working as a Helper under the Management in the year 1991 and worked as such till her service was terminated. According to W.W.1 she was working continuously under the Management during her service period and had been transferred to different places. Exts.1 and 2 are the xerox copies of the transfer orders under which the workman was transferred from Bhubaneswar to Balasore and again from Balasore to Bhubaneswar respectively. Ext.3 is the xerox copy of the order under which the workman joined at the Secundarabad Branch office of the Management. Ext. 7 to 9/ee are the xerox copies of appointment orders of the workman as a casual worker. In her evidence, W.W. 1 has categorically stated that she had worked continuously for more than 240 days in each year under the Management since the date of her joining. Such evidence of W.W.1 has not been challenged in any manner during her cross-examination. Merely a suggestion has been given that the workman is not entitled to the benefits of the I.D.Act. Both W.Ws.1 and 2 in their evidence have stated that the Management did not comply with the provisions of Section 25-F of the I.D. Act when the service of the workman was terminated. W.W.2 has also stated that the workman had worked continuously for more than 240 days in each calendar year during the period of her service.

7. The Technical Officer of the Management has been examined as M.W.1. In her evidence, M.W.1 has stated that the workman was working as a Helper on daily wage basis at Hyderabad Branch Office of the Management. In her cross-examination M.W.1 has admitted that no notice had been served on the workman before she was retrenched and that provisions under Section 25-F of the I. D. Act had not been complied with.

8. Thus from the evidence on record it is evident that the workman was working continuously within the meaning of Section 25-B of the I.D. Act and therefore, she was entitled to the benefits of Section 25-F of the I. D. Act. It has been admitted by the Management that the provisions under Section 25-F of the I.D. Act was not complied with when the service of the workman was terminated. Therefore, the termination of service of the workman by way of refusal of employment with effect from 8th May 1999 is illegal and unjustified. Consequently the workman is entitled to the benefit of her reinstatement in service. Since the Management institution is a sick institution and there is no specific evidence that the workman had not been engaged gainfully during the interim period, there is no order as to back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

S.K. Mohapatra
26-05-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K. Mohapatra
26-05-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government